

Valentine et. al. v. Texas Department of Criminal Justice
Report of Eldon Vail

I. INTRODUCTION

1. I am a former corrections administrator with nearly thirty-five years of experience working in and administering adult and juvenile institutions. Before becoming a corrections administrator, I held various line and supervisory level positions in a number of prisons and juvenile facilities in Washington State. I have served as the Superintendent (Warden) of 3 adult institutions, including facilities that housed maximum, medium and minimum-security inmates. I am over 18 years of age, and competent to make this declaration.

2. I served for seven years as the Deputy Secretary for the Washington State Department of Corrections (WDOC), responsible for the operation of prisons and community corrections. I briefly retired, but was asked by the former Governor of Washington, Chris Gregoire, to come out of retirement to serve as the Secretary of the Department of Corrections in the fall of 2007. I served as the Secretary for four years, until I retired in 2011.

3. Since my retirement I have served as an expert witness and correctional consultant for cases and disputes over 50 times in multiple jurisdictions—state, local and federal—in twenty-one different states. As an expert witness and correctional consultant, I have been retained to evaluate and offer my opinions on a variety of issues in the correctional environment.

4. Specifically, over the last few years, I have testified in the following cases:

Coleman, et al. v. Brown, et al.; No. 2:90-cv-0520-LKK-JMP, United State District Court, Eastern District of California; Testified, October 1, 2, 17 and 18, 2013

Graves v. Arpaio; No. cv-77-00479-PHX-NVW, United States District Court of Arizona; Testified, March 5, 2014

Corbett v. Branker; No. 5:13 CT-3201-BO, United States District Court, Eastern District of North Carolina, Western District; Special Master appointment November 18, 2013, Testified, March 21, 2014

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C.B., et al. v. Walnut Grove Correctional Authority, et al.; No. 3:10-cv-663-DPS-FKB, United States District Court for the Southern District of Mississippi, Jackson Division; Testified, April 1, 2 and 27, 2015

Fontano v. Godinez; No. 3:12-cv-3042, United States District Court, Central District of Illinois, Springfield Division; Testified, June 29, 2016

Doe v. Wolf; Case 4:15-cv-00250-DCB, United States District Court for the District of Arizona; Testified, November 14, 2016 and January 13, 14 and 22, 2020

Braggs, et al. v. Dunn, et al.; No. 2:14-cv-00601-WKW-TFM, United States District Court, Middle District of Alabama; Testified, December 22, 2016, January 4, 2017, February 21, 2017 and December 5, 2017

Wright v. Annucci, et al.; No. 13-CV-0564-MAD-ATB, United States District Court, Northern District of New York; Testified, February 13, 2017

Padilla v. Beard, et al.; Case 2:14-at-00575 United States District Court, Eastern District of California, Sacramento Division; Testified April 19, 2017

Cole v. Livingston; Civil Action No. 4:14-cv-1698, United States District Court, Southern District of Texas, Houston Division; Testified, June 20, 2017

Holbron v. Espinda; Civil No. 16-1-0692-04-RAN, Circuit Court of the First Circuit, State of Hawai'i; Testified, December 20, 2017

Dockery v. Hall; No. 3:13-cv-326-TSL-JMR, United States District Court for the Southern District of Mississippi, Jackson Division; Testified March 5-7, 2018

5. Attached hereto as **Exhibit 1** is a true and correct copy of my resume, which lists my work experience, publications, and service as an expert witness and correctional consultant. My billing rate for work on this case is \$175 per hour.

6. As a Superintendent, Assistant Director of Prisons, Assistant Deputy Secretary, Deputy Secretary and Secretary, I have been responsible for the safe and secure operations of adult prisons in the State of Washington, a jurisdiction that saw and

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continues to see a significant downward trend in prison violence. As an expert witness and consultant I have been called upon to address security issues and conditions of confinement in adult prisons in other states. I am experienced with sound correctional practice.

II. ASSIGNMENT

7. I have been asked by Plaintiffs' counsel to offer my opinion on whether or not the measures the Texas Department of Criminal Justice is taking to protect prisoners at the Wallace Pack Unit in Navasota, Texas from the novel coronavirus (COVID-19) are minimally adequate.

III. MATERIALS RELIED UPON

8. A complete list of the material I reviewed is attached to this report as **Exhibit 2**.

9. Previously, I also served as an expert witness addressing conditions at the Pack Unit in *Cole v. Collier*. My opinions in this case are also informed by my work in that case, including my inspection of the prison and the non-confidential documents that I reviewed.

IV. FACTUAL BASIS

10. The Wallace Pack Unit is a prison with a maximum capacity of 1,478 prisoners. It is a "Type I Geriatric Facility," and houses a high number of elderly and disabled prisoners. The Pack Unit is a medium-security prison, and primarily houses inmates with a lower security classification.

11. The Pack Unit is located in Navasota, Texas.

12. The Pack Unit is a dormitory-style prison, where each inmate has a small cubicle with a half-wall dividing him between his dorm-mates. As such, the inmates are always very close to each other when in their dormitories. The sleeping arrangements would put inmates at far less than six feet apart. The prison has very few individual cells.

13. The infirmary at the Pack Unit is small, and would not have the capacity to house a significant number of sick people.

14. Inmates at the Pack Unit typically eat in a communal "chow" hall, and walk from their dormitory to eat in the "chow" hall.

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15. Inmates at the Pack Unit who take medications must stand in a “pill line” that forms at least twice daily in the main hallway.

16. The majority of Pack Unit prisoners fall into at least one category of people that the Centers for Disease Control identifies as “at higher risk for severe illness from COVID-19,” either due to their age, or due to an underlying medical problem.

17. It is my understanding that each week, under normal conditions, each Pack Unit inmate is given five small bars of soap, each of which are approximately 80% the size of a hotel bar. I saw these bars of soap in the restroom when I toured the Pack Unit.

18. On March 13, 2020, Texas Governor Greg Abbott declared a statewide disaster, including prohibiting people in Texas from congregating in “groups of more than 10 people.”¹ To date, Gov. Abbott has not issued a state-wide “shelter in place” order as other states like New York, California, Washington, Illinois, Colorado, Oregon, Michigan, Minnesota, Ohio, Virginia, Alaska, Idaho, Montana, New Mexico, Kansas, Louisiana, Indiana, Kentucky, West Virginia, Maryland, Delaware, New Jersey, Connecticut, Massachusetts, Rhode Island, New Hampshire, and Vermont have.²

19. On March 16, 2020, Grimes County (where the Pack Unit is located) declared a local state of disaster, but did not issue a “shelter in place” order as other jurisdictions around the country are, and as other counties in Texas have.³ There are at least two people in Grimes County who have tested positive for the virus.⁴ Neighboring counties,

¹ See Executive Order GA 08 (Relating to COVID-19 preparedness and mitigation), Mar. 19, 2020, <https://www.grimescountytexas.gov/page/open/2263/0/20200319%20Governor%20Abbott%20Executive%20Order%20GA-08.pdf>.

² See Which States and Cities Have Told Residents to Stay at Home, New York Times, updated March 30, 2020, available at: <https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-order.html>

³ Declaration of Local Disaster for Public Health Emergency, Mar. 16, 2020, <https://www.grimescountytexas.gov/page/open/2263/0/MARCH%202016%202020%20GRIMES%20COUNTY%20SIGNED%20DECLARATION%20OF%20LOCAL%20DISASTER%20COVID%2019.pdf>; Extended Declaration of Local Disaster for Public Health Emergency, Mar. 23, 2020, <https://www.grimescountytexas.gov/page/open/2263/0/03232020%20EXTENDED%20MARCH%202016%202020%20GRIMES%20COUNTY%20DECLARATION%20OF%20LOCAL%20DISASTER%20COVID%2019.pdf>.

⁴ *Grimes County's second confirmed COVID-19 case is a close contact of first patient*, KBTX (Mar 21, 2020), <https://www.kbtx.com/content/news/Grimes-Countys-second-COVID-19-case-is-a-close-contact-of-the-first-patient-568993931.html>.

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including Brazos County and Washington County, also have people who have tested positive.⁵

20. Many jails around Texas and throughout the country are releasing prisoners in large numbers to prevent the spread of the virus. The U.S. Attorney General has issued a directive to the federal Bureau of Prisons to release certain “at-risk inmates who are non-violent and pose minimal likelihood of recidivism” to “home confinement” to get them out of BOP prisons.⁶

21. Inmates in the TDCJ system have already tested positive for the virus at multiple different facilities, and others have test results pending. Notably, the first inmate to test positive had recently been brought into TDCJ custody from the Harris County Jail.⁷

22. Other correctional facilities are now seeing the consequences of failing to take every measure possible to stop the spread of the virus. Rikers Island, in New York City, is especially hard hit, and has an infection rate 87 times higher than the rest of the country.⁸ The Cook County jail in Chicago is experiencing a similar disaster.⁹ The federal

⁵ Two Brazos County Deaths From Coronavirus And 44 Positive Cases As Of Sunday Afternoon, WTAW (Mar. 29, 2020), <http://wtaw.com/31-coronavirus-cases-brazos-county-friday/> and UPDATE: Six cases of coronavirus confirmed in Washington County, KAGS (Mar. 28, 2020), <https://www.kagstv.com/article/news/local/washington-county-in-texas-confirms-first-case-of-coronavirus/499-1599dc46-6e8d-4d4e-9012-5bc82d7bc608>. As of March 29, 2020, there were at least 59 confirmed cases of COVID-19 across the Brazos Valley. See Brazos Valley Confirmed COVID-19 Cases, KBTX, <https://www.kbtv.com/covid19>.

⁶ William Barr, re: Prioritization of Home Confinement as Appropriate in Response to COVID-19 Pandemic, March 26, 2020.

⁷ Coronavirus in Greater Houston: Live Updates, Houston Public Media, <https://www.houstonpublicmedia.org/articles/news/health-science/coronavirus/2020/03/23/364988/coronavirus-in-greater-houston-live-updates/> (last visited Mar. 30, 2020) (“The first Harris County inmate has tested positive for COVID-19, according to a release from the Harris County Sheriff’s Office.”); Jolie McCullough, “Coronavirus hits Texas prisons with first inmate case confirmed,” Texas Tribune, March 24, 2020, available at: <https://www.texastribune.org/2020/03/24/texas-prison-first-coronavirus-case/>.

⁸ Jessica Schulberg & Angelina Chapin, *Prisoners at Rikers Say It’s Like a ‘Death Sentence’ as Coronavirus Spreads*, Huffington Post (Mar. 28, 2020), https://www.huffpost.com/entry/rikers-prisoners-coronavirus_n_5e7e705ec5b6256a7a2a995d.

⁹ Sam Kelly, *Sheriff announces 51 new coronavirus cases at Cook County Jail, raising total to 89*, Chicago Sun Times, Mar. 28, 2020, <https://chicago.suntimes.com/coronavirus/2020/3/28/21198407/cook-county-jail-coronavirus-covid-19-cases-inmates-89> (noting that “92 are still awaiting results of the test”) and CBS Chicago, *Coronavirus In Chicago: 89 Inmates, 12 Staff At Cook County Jail Test Positive For COVID-19* (Mar. 28, 2020), <https://chicago.cbslocal.com/2020/03/28/coronavirus-cook-county-jail-inmates-staff-covid-19-saturday-march-28/>.

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Bureau of Prisons has already had one inmate die of the disease¹⁰ and a federal prison in Louisiana is reported to have had an “explosion” of virus cases with 30 staff members and prisoners testing positive.¹¹ State prisons in Minnesota¹² and Georgia¹³ also report prisoners testing positive. The situation is even more advanced in Illinois state prisons, where one man has died after testing positive for the virus¹⁴, seventeen were taken to a local hospital on March 30, 2020 and nine were on ventilators, stressing the resource for the surrounding, non-incarcerated community. By the time this declaration is signed, there are likely to be more reports of COVID-19 in our nation’s prisons. Tragically, this is just the beginning but prisons can reduce the risk to prisoners, staff and the public if prompt actions are taken.

V. OPINIONS

23. COVID-19 presents a special threat to people incarcerated in prisons and jails. It is well known by corrections administrators that any infectious disease must be taken extremely seriously in prisons and jails. People are housed in prisons and jails in very close quarters, and all infectious diseases appear to spread quickly.

24. It is not alarmist to say that prisons, and especially prisons like the Pack Unit, represent a ticking time bomb during this pandemic. In my experience, once a single prisoner developed an infectious disease, a large number of other prisoners would also catch it.

25. Prisons are not closed systems. Large numbers of staff enter the prison every day, and have the potential to bring the virus with them. Because Grimes County, where the

¹⁰ Sarah N. Lynch, *Prisoner serving time for drug charge is first U.S. inmate to die from COVID-19*, Reuters (Mar. 28, 2020), <https://www.reuters.com/article/us-health-coronavirus-prison-death/federal-inmate-serving-time-for-drug-charge-is-first-inmate-to-die-from-covid-19-idUSKBN21G04T> (“[A] 49-year-old prisoner in Louisiana who was serving a 27-year prison term for a drug charge, became the first federal inmate to die from COVID-19, the federal Bureau of Prisons (BOP) announced late on Saturday.”)

¹¹ https://www.washingtonpost.com/national/an-explosion-of-coronavirus-cases-cripples-a-federal-prison-in-louisiana/2020/03/29/75a465c0-71d5-11ea-85cb-8670579b863d_story.html

¹² <https://bringmethenews.com/minnesota-news/first-covid-19-cases-confirmed-in-minnesotas-prison-system>

¹³ <https://bringmethenews.com/minnesota-news/first-covid-19-cases-confirmed-in-minnesotas-prison-system>

¹⁴ <https://www.nbcchicago.com/news/coronavirus/stateville-inmate-dies-several-others-on-ventilators-after-testing-positive-for-coronavirus/2247361/>

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Pack Unit is located, and neighboring Washington County, where many Pack Unit employees likely live, are not “shelter in place” counties, the likelihood of staff being exposed to the virus and bringing it to work with them increases. It is ignorant to think that prisoners are safe inside the prison because they are not exposed to the outside world.

26. During times like this, it is imperative for corrections administrators to defer to the recommendations of agencies like the CDC. I have reviewed the CDC Interim Guidelines on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities and TDCJ’s policy addressing the pandemic. TDCJ’s response is deficient in several significant respects.

27. TDCJ does not mandate many items the CDC suggests that are necessary in this pandemic. For example, the TDCJ policy says “medical staff *should* educate” prisoners “about how COVID-19 is transmitted” rather than medical staff “will” or “must” educate prisoners. As components like washing hands, not touching the face, and disinfecting surfaces appear to be essential components to not catching the virus, it is imperative that TDCJ require prisoners be provided with this critical information. Indeed, the CDC says agencies must “ensure” this happens. I believe that TDCJ should create specific documents with this information, and distribute them to every prisoner, especially at a facility like the Pack Unit.

28. Likewise, an essential CDC recommendation is to tell prisoners to “report symptoms to staff.” This critical component is missing from TDCJ’s policy (and, without the education component above would likely be fruitless as inmates have not been instructed what the symptoms of the virus are).

29. Relatedly, though Gov. Abbott has suspended inmates’ medical co-pays “related to COVID-19,” this does not go far enough. Especially because the virus may, for some people, present as flu-like symptoms, inmates may not realize they actually have COVID-19 and fail to seek medical care due to the co-pay. It is also unclear if TDCJ inmates have been told their co-pays are suspended for any treatment during the pandemic. The most recent policy says only to, “Consider suspending co-pays for medical evaluations...” It is not clear what exactly has been done.¹⁵

¹⁵ B-14.52 (Mar.27.2020), I. D.

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30. TDCJ does not allow inmates to have alcohol-based hand sanitizer. Though this may be acceptable during normal times, this rule must be suspended for the duration of the pandemic. Currently, TDCJ inmates are repackaging hand sanitizer for TDCJ employees' use, but cannot possess it or use it themselves.¹⁶ Inmates in other states are manufacturing large volumes of hand sanitizer.¹⁷ Other prison systems, including Washington, have suspended rules prohibiting alcohol-based hand sanitizer for the duration of the pandemic. Use of hand sanitizer appears to be a cornerstone of addressing the virus, and this rule must be suspended. While there is some risk associated with the misuse of alcohol-based hand sanitizer being abused by some prisoners with substance abuse problems, that risk pales in comparison to the benefit to a much larger number of prisoners. When I was the Secretary of the Washington DOC during a flu epidemic at one of my 2,000 plus bed facilities, I authorized the temporary use of alcohol-based hand sanitizer without problem.

31. Similarly, TDCJ must provide additional soap to prisoners. It is my understanding that each week, inmates are issued the small amount of bar soap described above. In my opinion, this is grossly inadequate, as the response to the virus requires aggressive hand washing. As TDCJ has not increased the amount of soap given to inmates during the pandemic, it is not following this essential CDC guideline. Soap should simply be readily available or made available upon request.

32. TDCJ must also implement intensified cleaning and disinfecting. TDCJ inmates are required to work without pay. Thus, TDCJ has a near unlimited supply of labor to put to work aggressively cleaning surfaces in the housing areas. This should take place immediately, and be documented to ensure accountability.

33. TDCJ should also follow the CDC recommendation; to the extent it has not already done so, to aggressively offer the flu vaccine to all inmates.

¹⁶ Blakinger, Keri (@keribla). "I previously reported that Texas prisoners would be making some PPE for use by other state agencies. A few days ago, I circled back and learned they're also packaging hand sanitizer at the Roach Unit." March 30, 2020. Tweet.

¹⁷ Christina Carrega, *Nearly 100 prison inmates in NY to produce 100K gallons of hand sanitizer weekly*, ABC News (Mar. 10, 2020), <https://abcnews.go.com/Health/prison-inmates-ny-produce-100k-gallons-hand-sanitizer/story?id=69501815>.

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34. TDCJ's policy does not have anything about encouraging employees to work from home. Even at a prison like the Pack Unit, there are likely some employees who could work (at least partially) from home. This would decrease the risk of spreading the virus for everyone. Notably, several of the TDCJ employees who have tested positive for COVID-19 are parole officers. Much of their work with TDCJ prisoners could likely be accomplished by telephone or video conference (if video conferencing is available at the Pack Unit).

35. TDCJ's policy also does not address how the agency will coordinate with local partners, an essential CDC recommendation. The hospital for TDCJ inmates is located in Galveston, a two-hour drive from the Pack Unit. If a Pack Unit inmate requires emergency medical care, he will likely need to be taken to a much closer local hospital, which may also have more limited resources than usual because it is addressing the pandemic for the civilian population.

36. Likewise, TDCJ has not required each prison to update their operational emergency plans, as the CDC suggests. I would require every prison, and especially the Pack Unit, to do this, and report back to a central point for evaluation and proof this important work was done.

37. I understand that TDCJ has implemented some screening for staff and inmates entering the prison. Given that the virus can be asymptomatic for some people, this is inadequate. The Pack Unit should stop accepting new inmates. Ideally, inmates would stop leaving the Pack Unit as well, except for necessary medical treatment that cannot be postponed, and for release from custody. TDCJ staff must be encouraged to stay home if they are experiencing symptoms, and report any contact with persons known to be infected to their supervisors.

38. As the CDC suggests, TDCJ should aggressively implement social distancing measures as well. This could be accomplished by allowing fewer inmates to enter the dining hall at a single time, requiring each inmate in the dining hall sit at his own table (given the small size of the tables), staggering recreation and other out-of-dorm activities to limit people mixing with other housing areas while allowing some activities to go forward, and enforcing six-feet separations while inmates are required to wait in line.

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During any absolutely necessary transportation off the unit, TDCJ must ensure that social distancing is possible on buses and in vans by keeping the number of inmates confined in any single vehicle very low. Social distancing also has an important education component that TDCJ must implement – the CDC suggests to “communicate clearly and frequently with incarcerated/detained persons about changes to their daily routine and how they can contribute to risk reduction.”

39. The CDC says that prisons should test prisoners who are being released for the virus prior to their release from prison—the purpose being that appropriate medical referrals can take place and the person testing positive and the general public can be as safe as possible. Absent this practice by TDCJ authorities, the community will be placed at an unnecessary risk.

40. Finally, the TDCJ policy does not provide for training on how to take on and off personal protective equipment properly. In my experience, correctional officers would require this training to prevent cross contamination when removing this equipment. In fact, the TDCJ policy does not use the word “train” anywhere. In my experience such training could be provided while meeting CDC’s appropriate requirements for social distance. Instead, it appears TDCJ has suspended all training.

41. If the virus enters the prison, it will be a threat not only to the inmates, but also to the general public. The Pack Unit does not have the capacity to treat seriously ill patients – they will have to be transferred to “free world” hospitals, and will end up taking up resources that may be available to free citizens. In conjunction with this, however, TDCJ’s available policies do not suggest how TDCJ will “safely transfer persons with severe illness from COVID-19 to a local hospital if they require care beyond what the facility is able to provide,” as the CDC suggests.

42. As discovery has not yet begun in this case, I reserve the right to clarify and change my opinions as I am provided additional data.

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44. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 1, 2020 in Olympia, Washington.

E. Vail
Eldon Vail

EXHIBIT 1

ELDON VAIL

1516 8th Ave SE
Olympia, WA. 98501
360-349-3033
Nodleliav@comcast.net

WORK HISTORY

Nearly 35 years working in and administering adult and juvenile institutions, and probation and parole programs, starting at the entry level and rising to Department Secretary. Served as Superintendent of 3 adult institutions, maximum to minimum security, male and female. Served as Secretary for the Washington State Department of Corrections (WADOC) from 2007 until 2011.

▪ Secretary	WADOC	2007-2011
▪ Deputy Secretary	WADOC	1999-2006
▪ Assistant Deputy Secretary	WADOC	1997-1999
▪ Assistant Director for Prisons	WADOC	1994-1997
▪ Superintendent	McNeil Island Corrections Center	1992-1994
▪ Superintendent	WA. Corrections Center for Women	1989-1992
▪ Correctional Program Manager	WA. Corrections Center	1988
▪ Superintendent	Cedar Creek Corrections Center	1987
▪ Correctional Program Manager	Cedar Creek Corrections Center	1984-1987
▪ Juvenile Parole Officer	Division of Juvenile Rehabilitation	1984
▪ Correctional Unit Supervisor	Cedar Creek Corrections Center	1979-1983
▪ Juvenile Institution Counselor	Division of Juvenile Rehabilitation	1974-1979

SKILLS AND ABILITIES

- Ability to analyze complex situations, synthesize the information and find practical solutions that are acceptable to all parties.
- A history of work experience that demonstrates how a balance of strong security and robust inmate programs best improves institution and community safety.
- Leadership of a prison system with very little class action litigation based on practical knowledge that constitutional conditions are best achieved through negotiation with all parties and not through litigation.
- Extensive experience as a witness, both in deposition and at trial.
- Experience working with multiple Governors, legislators from both political parties, criminal justice partners and constituent groups in the legislative and policymaking process.

- Skilled labor negotiator for over a decade. Served as chief negotiator with the Teamsters and the Washington Public Employees Association for Collective Bargaining Agreements. Chaired Labor Management meetings with Washington Federation of State Employees.

HIGHLIGHTS OF CAREER ACCOMPLISHMENTS

- Reduced violence in adult prisons in Washington by over 30% during my tenure as Secretary and Deputy Secretary even though the prison population became more violent and high risk during this same time period.
- Long term collaboration with the University of Washington focusing on improving treatment for the mentally ill in prison and the management of prisoners in and through solitary confinement.
- Implemented and administered an extensive array of evidence based and promising programs:
 - Education, drug and alcohol, sex offender and cognitive treatment programs.
 - Implemented sentencing alternatives via legislation and policy, reducing the prison populations of non-violent, low risk offenders, including the Drug Offender Sentencing Alternative and, as the Secretary, the Parenting Sentencing Alternative. <http://www.doc.wa.gov/corrections/justice/sentencing/parenting-alternative.htm>
 - Pioneered extensive family based programs resulting in reductions in use of force incidents and infractions, as well as improved reentry outcomes for program participants.
 - Established Intensive Treatment Unit for mentally ill inmates with behavioral problems.
 - Established step down programs for long-term segregation inmates resulting in significant reduction in program graduate returns to segregation.
- Initiated the Sustainable Prisons Project
<http://blogs.evergreen.edu/sustainableprisons/>
- Improved efficiency in the agency by administrative consolidation, closing 3 high cost institutions and eliminating over 1,200 positions. Housed inmates safely at lowest possible custody levels, also resulting in reduced operating costs.
- Increased partnerships with non-profits, law enforcement and community members in support of agency goals and improved community safety.
- Successful settlement of the Jane Doe class action law suit, a PREA case regarding female prisoners in the state's prisons for women.

- Resolved potential class action lawsuit regarding religious rights of Native Americans.
<https://www.seattletimes.com/opinion/a-precedent-for-native-americans-religious-freedom-in-washington-prisons/>
- Led the nation's corrections directors to support fundamental change in the Interstate Compact as a result of the shooting of 4 police officers in Lakewood, WA.
- Dramatically improved media relations for the department by being aggressively open with journalists, challenging them to learn the difficult work performed by corrections professionals on a daily basis.

EDUCATION AND OTHER BACKGROUND INFORMATION

- Bachelor of Arts - The Evergreen State College, Washington – 1973
- Post graduate work in Public Administration - The Evergreen State College, Washington - 1980 and 1981
- National Institute of Corrections and Washington State Criminal Justice Training Commission - various corrections and leadership training courses
- Member of the American Correctional Association
- Associate member, Association of State Correctional Administrators (ASCA)
- Guest Speaker, Trainer and Author for the National Institute of Corrections (NIC)
- Instructor for Correctional Leadership Development for the National Institute of Corrections
- Author of *Going Beyond Administrative Efficiency—The Budget Crisis in the State of Washington*, published in Topics of Community Corrections by NIC, 2003
- Consultant for *Correctional Leadership Competencies for the 21st Century*, an NIC publication
- Consultant for Correctional Health Care Executive Curriculum Development, an NIC training program, 2012
- Commissioner, Washington State Criminal Justice Training Commission 2002-2006, 2008-2011
- Member, Washington State Sentencing Guidelines Commission 2007-2011

- Advisory Panel Member, *Correctional Technology—A User's Guide*
- Co-chair with King County Prosecutor Dan Satterberg, *Examining the Tool Box: A Review of Supervision of Dangerous Mentally Ill Offenders*
- Guest lecturer on solitary confinement, University of Montana Law School in 2012
- On retainer for Pioneer Human Services from July 2012 - July 2013
- On retainer for BRK Management Services from September 2012 – April 2013
- Guest Editorials, Seattle Times, February 22, 2014 and April 5th, 2019
<http://www.seattletimes.com/opinion/guest-opinions-should-washington-state-abolish-the-death-penalty/>
<https://www.seattletimes.com/opinion/washington-state-is-ready-to-put-an-end-to-the-death-penalty/>

CURRENT ACTIVITIES

- Serve on the Board of Advisors for Huy, a non-profit supporting Native American Prisoners
- Serve on the Board of Directors for HEAL for Reentry, a non-profit supporting Native Americans' transition to the community from prison
- Retained as an expert witness or correctional consultant in the following:
 - ***Mitchell v. Cate***
No. 08-CV-1196 JAM EFB
United States District Court, Eastern District of California,
Declarations, March 4, May 15 and June 7, 2013
Deposed, July 9, 2013
Case settled, October 2014
 - ***Ananachescu v. County of Clark***
No. 3:13-cv-05222-BHS
United States District Court, Western District of Tacoma
Case settled, February 2014
 - ***Gifford v. State of Oregon***
No. 6:11-CV-06417-TC
United States District Court, For the District of Oregon,
Eugene Division,
Expert report, March 29, 2013
Case settled, May 2013

- ***Parsons, et al v. Ryan***
No. CV 12-06010 PHX-NVW,
United States District Court of Arizona
Declarations and reports, November 8, 2013,
January 31, February 24 and September 4, 2014
Deposed, February 28 and September 17, 2014
Case settled, October 2014
- ***Coleman, et al v. Brown, et al***
No. 2:90-cv-0520 LKK JMP,
United States District Court, Eastern District of California,
Declarations, March 14, May 29 and August 23, 2013;
February 11, 2014
Deposed, March 19 and June 27, 2013
Testified, October 1, 2, 17 and 18, 2013
- ***Peoples v. Fischer***
No. 1:11-cv-02694-SAS,
United States District Court, Southern District of New York
Interim settlement agreement reached February 19, 2014
Case settled, March 2016
Continuing assignment monitoring for the Plaintiffs
- ***Dockery v. Hall***
No. 3:13-cv-326 TSL JMR,
United States District Court for the Southern District of
Mississippi, Jackson Division
Reports, June 16, 2014, December 29, 2016;
March 23, 2017; November 16, 2018
Deposed, April 7, 2017
Testified March 5-7, 2018
- ***C.B., et al v. Walnut Grove Correctional Authority, et al***
No. 3:10-cv-663 DPS-FKB,
United States District Court for the Southern District of
Mississippi, Jackson Division
Memo to ACLU and Southern Poverty Law Center,
March 14, 2014, filed with the court
Reports, August 4, 2014 and February 10, 2015
Testified, April 1, 2 and 27, 2015
- ***Wright v. Annucci, et al***
No. 13-CV-0564 (MAD)(ATB),
United States District Court, Northern District of New York
Reports, April 19 and December 12, 2014
Testified, February 13, 2017

- ***Graves v. Arpaio***
No. CV-77-00479-PHX-NVW,
United States District Court of Arizona
Declarations, December 15, 2013, April 1, 2016,
December 22, 2017; February 9 and October 22, 2018;
August 19 and 30, 2019
Testified, March 5, 2014
- ***Corbett v. Branker***
No. 5:13 CT-3201-BO,
United States District Court, Eastern District of North Carolina,
Western District
Special Master appointment November 18, 2013
Expert Report, January 14, 2014
Testified, March 21, 2014
- ***Fontano v. Godinez***
No. 3:12-cv-3042,
United States District Court, Central District of Illinois,
Springfield Division
Report, August 16, 2014
Testified June 29, 2016
Case settled June 30, 2016
- ***Atencio v. Arpaio***
No. CV12-02376-PHX-PGR,
United States District Court of Arizona
Reports, February 14 and May 12, 2014
Deposed, July 30, 2014
Case settled, March 2018
- ***Larry Heggem v. Snohomish County***
No. CV-01333-RSM,
United States District Court,
Western District of Washington at Seattle
Report, May 29, 2014
Deposed, June 27, 2014
- ***Doe v. Michigan Department of Corrections***
No. 5:13-cv-14356-RHC-RSW,
United States District Court, Eastern District of Michigan,
Southern Division
Declarations, September 12, 2018 and September 30, 2019
Deposed, October 17, 2019

- ***Disability Rights, Montana, Inc. v. Richard Opper***
No. CV-14-25-BU-SHE,
United States District Court for the District of Montana,
Butte Division
- ***Padilla v. Beard, et al***
Case 2:14-at-00575,
United States District Court, Eastern District of California,
Sacramento Division
Declaration, February 26, 2016
Deposed June 3, 2016
Testified April 19, 2017
Case settled, April 24, 2017
- ***Braggs, et al v. Dunn, et al***
No. 2:14-cv-00601-WKW-TFM,
United States District Court, Middle District of Alabama
Declarations, September 3, 2014, April 29, 2015,
June 3, 2015
Expert Report, July 5, 2016
Declarations, February 9 and October 19, 2017
Expert Report, July 1, 2018
Deposed August 21, 2016
Testified, December 22, 2016, January 4, February 21, December
5, 2017; February 13, October 23, November 29, 2018; April 3,
2019
- ***Sassman v. Brown***
No. 2:14-cv-01679-MCE-KJN,
United States District Court, Eastern District of California,
Sacramento Division
Declaration, August 27, 2014; Report, December 5, 2014
Deposed, December 15, 2014
- ***Robertson v. Struffert, et al***
Case 4:12-cv-04698-JSW,
United States District Court, Northern District of California
Declaration, March 16, 2015
Deposed May 4, 2015
Case settled, October 2015
- ***Commonwealth of Virginia v. Reginald Cornelius Latson***
Case No: GC14008381—00,
General District Court of the County of Stafford
Report, January 12, 2015
Pardon granted

- ***Flores v. United States of America***
Civil Action No 14-3166,
United States District Court, Eastern District of New York
Report, August 14, 2015
- ***Latson v. Clarke***
No. 1:16-cv-00447-GBL-MSN,
United States District Court, Eastern District of Virginia
Reports, November 16, 2016 and January 6, 2017
Deposed, December 13, 2016
Case settled, May 2, 2017
- ***Latson v. Clarke***
Civil No. 1:16-cv-00039,
United States District Court, Western District of Virginia,
Abingdon Division
Report, September 29, 2017
Deposed, December 28, 2017
- ***Star v. Livingston***
Case No: 4:14-cv-03037,
United States District Court, Southern District of Texas,
Houston Division
Reports, March 3, 2015 and October 12, 2016
Case settled, March 2018
- ***Doe v. Wolfe***
Case 4:15-cv-00250-DCB,
United States District Court for the District of Arizona
Reports, December 4, 2015; March 10, 2016;
September 23 and November 20, 2017
Deposed, January 5, 2018
Testified, November 14, 2016 and January 13, 14 and 22, 2020
- ***Redmond v. Crowther***
Civil No. 2:13-cv-00393-PMW,
United States District Court, Central Division,
State of Utah
Report, April 28, 2015
Deposed, July 28, 2015
- ***Fant v. The City of Ferguson***
Case No. 415-cv-00253 E.D. MO,
United States District Court, Eastern District of Missouri
Report, January 8, 2016

- ***Cole v. Livingston***
Civil Action No. 4:14-cv-1698,
United States District Court, Southern District of Texas,
Houston Division
Reports, August 5, 2015 and April 28, 2017
Deposed, December 2, 2015
Testified, June 20, 2017
Case settled, March 2018
- ***State of Arizona, Appellee, v. Pete J. Van Winkle, Appellant***
No. CR-09-0322-AP,
Testified, March 28, 2016
- ***Rasho v. Godinez***
Civil Action No. 07-CV-1298,
United States District Court, Central Division of Illinois,
Peoria Division
Case settled, December 2015
- ***Morgal v. Williams***
No. CV 12-280-TUC-CKJ,
United States District Court for the District of Arizona
Report, February 1, 2016
Deposed, February 25, 2016
- ***Sacramento County Sheriff***
Retained by Sacramento County Sheriff to evaluate housing units
in the Sacramento County jails, including maximum custody,
segregation and protective custody
Report, June 27, 2016
Case settled, June 2019
- ***Community Legal Aid Society, Inc. v. Robert M. Coupe***
Case No. 1:15-cv-00688,
United States District Court for the District of Delaware
Report, March 31, 2016
Case settled, August 2016
- ***C-Pod Inmates of Middlesex County Adult Correction Center, et al. v. Middlesex County***
Civil Action No. 15-7920 (PGS),
United States District Court for the District of New Jersey
Report, July 29, 2016
Case settled, September 2018

- ***Williams v. Snohomish County***
Case No. 15-2-22078-1 SEA,
Superior Court for the State of Washington, King County
- ***P.D. v. Middlesex County***
Case No. MID-L-3811-14,
Superior Court of New Jersey
Report, July 29, 2016
- ***Gould v. State of Oregon, et al***
Case No. 2:15-cv-01152-SU,
United States District Court for the District of Oregon
Case settled, October 2016
- ***Johnson v. Mason County***
NO. 3:14-cv-05832-RBL,
United States District Court, Western District of Washington at
Tacoma
Declaration, April 5, 2016
Deposed, October 26, 2016
Case settled, March 2017
- ***United States Department of Justice***
Retained by DOJ to join a team investigating conditions for
LGBT inmates including sexual harassment, sexual abuse and
sexual assaults by inmates and staff in the Georgia Department of
Corrections
Report, October 2016
- ***Daniel Evans v. Management and Training Corporation, et al***
NO. 3:15-cv-770-DPJ-FKB,
United States District Court, Southern District of Mississippi,
Northern Division
Report, October 17, 2016
Case settled, January 2017
- ***Webb v. Collier***
Civil Action NO. 6:13cv711,
United States District Court, Eastern District of Texas,
Tyler Division
Report, March 13, 2017
Deposed, May 5, 2017
Case settled, March 2018

- ***Holbron v. Espinda***
Civil No. 16-1-0692-04 RAN,
Circuit Court of the First Circuit, State of Hawai'i
Reports, February 1 and November 20, 2017
Testified, December 20, 2017
- ***Carruthers v. Israel***
Case No. 76-6086-civ-Middlebrooks,
United States District Court, Southern District of Florida
- ***Dahl v. Mason County***
Case 3:16-cv-05719.
United States District Court,
Western District of Washington at Tacoma
Report, August 21, 2017, Declaration, December 4, 2017
Case settled, August 2018
- ***Adams, James, Hudson v. Livingston***
Civil Action No. 4:14-cv-03326,
United States District Court, Southern Division of Texas
Houston Division
Report, June 15, 2017
Case settled, March 2018
- ***Ashker v. Governor of the State of California, et al***
Case No. 4:09 CV 05796 CW,
United States District Court, Northern District of California,
Oakland Division
Declaration, December 6, 2017
- ***Togonidze v. Livingston***
Civil Action No. 3:13-cv-229,
United States District Court, Southern District of Texas,
Galveston Division
Report, October 3, 2017
Case settled, March 2018
- ***Martone v. Livingston***
Civil Action No 4:13-CV-3369,
United States District Court, Southern Division of Texas,
Houston Division
Case settled, March 2018

- ***Cody v. City of St. Louis***
Case 4:17-cv-02707-AGF,
United States District Court, Eastern District of Missouri,
Eastern Division
Affidavit, August 30, 2018, Report September 27, 2019
- ***Sabata v. Nebraska Department of Correctional Services***
Case No. 4:17-CV-3107,
United States District Court for the State of Nebraska
Declarations, August 24, 2018, February 14, 2019 and
June 26, 2019
Deposed, April 9, 2019
- ***Pickens v. Management & Training Corporation***
Civil Action No. 3:16cv-913-CWR-FKB,
United States District Court for the Southern District of
Mississippi, Northern Division
Report, December 19, 2018
Case settled, January 2019
- ***Davis v. Baldwin***
Case No. 3:16-cv-600,
United States District Court, Southern Division of Illinois
Report, September 6, 2019
Deposed, November 13, 2019
- ***Amos v. Taylor***
No. 4:20-cv-00007-DMB-JMV,
United States District Court, Northern District of Mississippi,
Greenville Division
Declarations, January 31, February 2 and 8, 2020
- ***Armstrong v. Newsome***
No. C94-2307 CW
United States District Court, Northern District of California,
Oakland Division
Declaration, February 24, 2020

EXHIBIT 2

Exhibit 2
Materials Review by Eldon Vail (Arpil 1, 2020)

1. *Executive Order GA 08* (Relating to COVID-19 preparedness and mitigation), Mar. 19, 2020,
<https://www.grimescountytx.gov/page/open/2263/0/20200319%20Governor%20Abbot%20Executive%20Order%20GA-08.pdf>.
2. *Which States and Cities Have Told Residents to Stay at Home*, New York Times, updated March 30, 2020, available at: <https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-order.html>.
3. *Declaration of Local Disaster for Public Health Emergency*, Mar. 16, 2020,
<https://www.grimescountytx.gov/page/open/2263/0/MARCH%202020%20GRIMES%20COUNTY%20SIGNED%20DECLARATION%20OF%20LOCAL%20DISASTER%20COVID%2019.pdf>.
4. *Extended Declaration of Local Disaster for Public Health Emergency*, Mar. 23, 2020,
<https://www.grimescountytx.gov/page/open/2263/0/03232020%20EXTENDED%20MARCH%202020%20GRIMES%20COUNTY%20DECLARATION%20OF%20LOCAL%20DISASTER%20COVID%2019.pdf>.
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7. KAGSTV, “KAGSTV, Update: Six cases of coronavirus confirmed in Washington County” (March 29, 2020) <https://www.kagstv.com/article/news/local/washington-county-in-texas-confirms-first-case-of-coronavirus/499-1599dc46-6e8d-4d4e-9012-5bc82d7bc608>.
8. *Brazos Valley Confirmed COVID-19 Cases*, KBTX, <https://www.kbtx.com/covid19>.
9. William Barr, *re: Prioritization of Home Confinement as Appropriate in Respose to COVID-19 Pandemic*, March 26, 2020.
10. Jolie McCullough, “Coronavirus hits Texas prisons with first inmate case confirmed,” Texas Tribune, March 24, 2020, available at: <https://www.texastribune.org/2020/03/24/texas-prison-first-coronavirus-case/>.

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12. Jessica Schulberg & Angelina Chapin, *Prisoners at Rikers Say It’s Like a ‘Death Sentence’ as Coronavirus Spreads*, Huffington Post (Mar. 28, 2020), https://www.huffpost.com/entry/rikers-prisoners-coronavirus_n_5e7e705ec5b6256a7a2a995d.
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23. Centers for Disease Control, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (Mar. 23, 2020) available at <https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf>.